STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM STEVENS and MATHILDA STEVENS,

Plaintiffs-Appellants,

v

MACKINAC ISLAND CARRIAGE TOURS, INC.,

Defendant-Appellee,

and

CHAMBERS RIDING STABLE, INC.,

Defendant.

UNPUBLISHED
May 26, 2005

No. 253211
Mackinac Circuit Court
LC No. 00-005018-NO

Before: Murray, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

Plaintiffs, William and Mathilda Stevens, appeal by right from the trial court's order granting summary disposition in favor of defendant, Mackinac Island Carriage Tours, Inc.[1] Plaintiffs brought suit after William Stevens was thrown from a horse rented to him by defendant. Plaintiffs allege that defendant was grossly negligent in outfitting the horse with defective reins that broke when the horse bucked, causing William Stevens to be thrown from the horse and injuring his shoulder.[2] We affirm.

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[1] Defendant, Chambers Riding Stable, Inc., was dismissed as a defendant by stipulation of the parties.

[2] Mathilda Stevens seeks additional damages from defendant for loss of consortium.

Plaintiffs' first issue on appeal is whether the trial court properly excluded a photograph of Mr. Stevens taken while he was on the horse before the accident. We find that the trial court did not abuse its discretion in excluding the photograph.

The trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). The trial court has abused its discretion if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made. *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000). Generally, all relevant evidence is admissible. MRE 402; *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188-189; 600 NW2d 129 (1999). However, even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403; *Waknin v Chamberlain*, 467 Mich 329, 334; 653 NW2d 176 (2002). Unfair prejudice exists when there is a tendency that the evidence will be given undue or preemptive weight by the jury. *Lewis v LeGrow*, 258 Mich App 175, 199; 670 NW2d 675 (2003).

In this case, plaintiffs allege that the reins had broken previously and that defendant had knotted them back together to keep them in use. Plaintiffs offered the photograph to show that the reins had been knotted together before the accident. However, the photograph was taken from several feet away and is of poor quality, making it impossible to determine from the photograph whether the reins were knotted together. Therefore, the photograph's probative value as to the existence of a knot is minimal. Moreover, allowing in the photograph could mislead a jury into believing that it depicts a knot in the reins, even though it is unclear what the photograph actually depicts. Because the photograph has little probative value and is potentially misleading, a jury could give it undue weight in determining the existence of a knot, which could reasonably be viewed as making the photograph unfairly prejudicial. *Lewis*, *supra* at 199. Because there is justification for the trial court's ruling that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice, it cannot be said to have abused its discretion in excluding the photograph. *Snider*, *supra* at 419. This decision does not discount plaintiffs' argument that the picture, coupled with William Stevens' testimony regarding the reins' condition after his fall, warrant a jury considering the photo. This is a plausible argument, but because there was also justification for the trial court's decision, we must affirm. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 303-304; 660 NW2d 351 (2003).

Plaintiffs also assert that the trial court incorrectly granted summary disposition in favor of defendant. We disagree, because the trial court correctly found that there was no genuine issue of material fact as to whether the reins had broken previously and had subsequently been knotted together.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition may be granted when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, admissions, and other documentary evidence in the

light most favorable to the non-moving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

In this case, plaintiffs have simply not presented sufficient evidence of either a previous break in the reins or the existence of a knot at the site of the break for reasonable minds to differ upon either issue. *West*, *supra* at 183. Plaintiff William Stevens testified that after the accident he could see the reins were curled as if they had broken before and been tied together. Plaintiffs' expert also testified that the leather reins were stretched and showed evidence of having been tied. But no one testified to having seen a knot. Mr. Stevens admitted that he could not rule out the possibility that the reins were attached as normally designed. Plaintiffs' expert testified that the fact that there was evidence of curling in the reins after the accident did not necessitate a finding that the reins had been broken previously; nor could plaintiffs' expert say whether the break even occurred in the area of the reins where she believed a knot to have been. Essentially, plaintiffs are asking this Court to conclude that a reasonable person could find from the fact that the reins evidenced curling after the accident that it is more likely than not that the reins had broken previously and that defendant had tied the broken ends together to keep them in use. However, in our view, even when the evidence is analyzed in the light most favorable to plaintiffs, a reasonable person could not make the inferences necessary to support their theory of gross negligence. Plaintiff's theory consisted solely of speculation and conjecture, which are insufficient to withstand a motion for summary disposition. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Therefore, the trial court correctly granted summary disposition in favor of defendant because there is no genuine issue as to any material fact. *West*, *supra* at 183.

Because we find plaintiffs failed to present sufficient evidence to create a genuine issue of material fact as to whether the reins had previously broken and been knotted together, we need not address plaintiffs' last claim of error, i.e., the trial court's finding that such conduct by defendant would not constitute gross negligence.

Affirmed.

/s/ Christopher M. Murray
/s/ Peter D. O'Connell
/s/ Pat M. Donofrio